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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

STATE OF ILLINOIS,
Movant-Plaintiff,

vs

STATE OF MICHIGAN,
Defendant.

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

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Now comes John H. Shannon, by his attorneys Kelman, Loria, Downing & Schneider, and respectfully moves this Court for leave to file a brief in this case as *amicus curiae* pursuant to Supreme Court Rule 42(3). The consent of the attorney for defendant State of Michigan has been obtained, but the attorney for movant-plaintiff State of Illinois has refused to consent to the filing of a brief by John H. Shannon as *amicus curiae*. John H. Shannon respectfully represents as follows:

1. Short Statement of Proceedings and Facts:

a) John H. Shannon, a resident of Michigan, is paralyzed from the waist down as a result of injuries sustained in a fall in the course of his employment on September 1, 1959, when he fell from a roof in Pontiac, Michigan, while working for a Michigan employer, Star Wrecking Company. Star Wrecking Company had entered into, in Michigan, a contract of workmen's compensation insurance, subject to Michigan law, with Highway Insurance Company, an Illinois corporation (referred to hereinafter as "Highway").

b) Because of contracts of excess insurance entered into between Highway and Peerless Insurance Company, a Connecticut corporation (hereinafter referred to as "Peerless"), and between Peerless and Excess Insurance Co., Ltd. (hereinafter referred to as "Excess"), Highway was permitted, by Illinois law, to set its applicable reserve at a mere $25,000.00 when Mr. Shannon became paralyzed as a result of his fall, without reserving a realistic amount while it was then solvent for the protection of Mr. Shannon.

c) In June of 1967, Highway was declared insolvent and placed into the hands of a statutory liquidator, the director of the Department of Insurance of the State of Illinois. By this time, Highway had exhausted its retention and Peerless had taken effective control over the risk.

d) Proceedings involving the two excess carriers initiated in Michigan in 1967 and 1968. This litigation was appealed through the Court of Appeals for the State of Michigan and to the Michigan Supreme Court. The two excess insurance companies and the statutory liquidator for the State of Illinois participated fully in these proceedings and defended against the assertions made against them.

e) In 1969 an *ex parte* injunction was entered by the Circuit Court of Cook County, Illinois enjoining in general all proceedings in other states and forums without naming John H. Shannon or his employer or any officer of the State of Michigan and without providing any prior notice or opportunity to be heard.

f) Pending the decision of the Michigan Supreme Court, an interpleader action was filed by Peerless in Federal District Court in the Eastern District of Michigan, which interpleader was dismissed upon Motion of John H. Shannon. No Appeal was taken by Peerless from such dismissal.

g) On December 21, 1971, the Michigan Supreme Court ruled that the contracts of excess insurance specifically incorporated the Michigan Workmen's Compensation Act and that any provision in the excess insurance contracts, inconsistent with the Michigan Workmen's Compensation Act, would be stricken from the policy, leaving the remaining portion of the contract applicable to the prompt enforcement of John Shannon's rights, 386 Mich 474 (1971) (Exhibit D to movant's complaint). Up to this time, John H. Shannon had never been formally named in or served with any injunction or restraining order from any Illinois

court, or provided any prior notice of any injunctive proceedings in Illinois.

h) Following the decision of the Michigan Supreme Court in which litigation the statutory liquidator for the State of Illinois and the two excess insurance companies had fully participated, the statutory liquidator and the excess insurance companies both failed and neglected to apply for writ of certiorari to the United States Supreme Court and the Michigan decision became final.

i) Pursuant to the final decision of the Michigan Supreme Court, John H. Shannon filed a petition for hearing before the Michigan Workmen's Compensation Bureau seeking to obtain, among other things, reimbursement for his medical expenses as against the excess carriers.

j) Thereafter, Peerless Insurance Company instituted another interpleader action, this time in the Federal District Court in Chicago, obtaining another *ex parte* injunction. The State of Illinois filed its instant motion for leave to file complaint in the Supreme Court of the United States.

2. Nature of applicant's interest:

a) John Shannon's medical expenses and care remain uncompensated under the Michigan Workmen's Compensation Act. There is a possibility that the claim of the State of Illinois in the case currently proposed to be brought before this Honorable Court could result in the deprivation to Mr. Shannon of the benefits to which he is entitled under Michigan Law. Under the language of the Michigan Workmen's Compensation Law, benefits due to injured Michigan workmen from excess insurance cannot be an asset of an insolvent primary insurer. The excess insurance companies, having received Michigan premium dollars from a Michigan employer, insuring Michigan workmen under Michigan law and having assumed control of the risk on an

accident occurring in Michigan cannot dissolve this liability through an Illinois liquidation of an insolvent primary Illinois insurance carrier.

b) It has been adjudicated that the tribunal competent to establish the dollar value of this liability is the Michigan Workmen's Compensation Bureau, that matters conducted in the State of Michigan, have been properly brought in Michigan and acceded to jurisdictionally by the Director of Insurance for the State of Illinois, and have been litigated fairly and fully in the courts of Michigan. To allow this litigation to be reopened and collaterally attacked in other states and forums, possibly necessitating the appearance of an injured Michigan workman, a paraplegic, would permit the type of vexatious litigation and impose the kind of undue hardship upon Mr. Shannon that the laws of Michigan and decisions of the United States Supreme Court have sought to avoid.

3. Movant's discussion inadequate:

a) The motion and complaint filed by the State of Illinois argues that the decision of the Michigan Supreme Court is contrary to the Uniform Insurers Liquidation Act; however, the discussion of such contention is inadequate in that the judicial relief accorded John Shannon by the Michigan Supreme Court against the excess insurance carriers is not in any way inconsistent with the application of the Uniform Insurance Liquidation Act to Highway Insurance Company, the primary carrier. The insolvent carrier in this case is not Peerless or Excess, and the benefit of any insolvency proceeding should not attach to Peerless or Excess, which are entirely solvent and able to pay directly the liability they insured. Under the decision of the Michigan Supreme Court, Mr. Shannon seeks no money from Highway Insurance Company, since Highway had long ago exhausted its retention. Mr. Shannon is only seeking payment from the excess insurance carriers.

b) Similarly, the discussion of the movant State of Illinois leads one to think that injunctions had been properly obtained prior to the final determination of the Michigan Supreme Court, when in fact, all Illinois injunctions were *ex parte* without prior notice or opportunity to be heard or other semblance of due process.

c) The discussion of the movant-plaintiff infers that Michigan had no jurisdiction over the Illinois receiver but fails to mention that, the State of Illinois, through its Director of Insurance, had, on March 11, 1971, unequivocally consented to the jurisdiction of the Michigan Workmen's Compensation Department and sought an order in its favor from the Michigan Workmen's Compensation Department. It is incongruous that a Director of Insurance for the State of Illinois, having sought the protection of the Michigan Workmen's Compensation Department and submitted to its jurisdiction, and invoking the jurisdiction of the Michigan Workmen's Compensation Department in its behalf, now seeks to establish in the Supreme Court of the United States, through the Attorney General for the State of Illinois, that the Michigan Workmen's Compensation Department has no jurisdiction over it.

Wherefore, plaintiff John H. Shannon respectfully requests permission to file a brief *amicus curiae* on the merits.

Respectfully submitted,

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